12

Supreme Court, U.S.
FILED
JUL 15 1953
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 181

JENNIE E. DARGEL, ET AL.

Petitioners,

vs.

WILLIAM G. BARR, DIRECTOR OF RENT STABILIZATION, ET AL.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

ROBERT A. KAHN,
135 S. La Salle St.,
Chicago 3, Illinois,
Counsel for Petitioners.

REX K. NELSON,
416 5th St. N. W.,
Washington, D. C.
Of Counsel.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Statement of matter involved	1
Jurisdiction	5
Questions presented	5
Reasons for granting the writ	5
Summary of reasons for granting writ	24
Conclusion	27
Appendix	28

Citations

Statutes:

Defense Production Act of 1950, as amended by Public Law 429, 82nd Congress, Section 408 (a)(c)	5
Housing and Rent Act of 1947, Sec. 206 (h)	7

Miscellaneous:

Rent procedural Reg. 2, Sec. 26	5
Rent procedural Reg. 3, Sec. 26 (b)	3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 181

JENNIE E. DARGEL, ET AL.

Petitioners,

vs.

WILLIAM G. BARR, DIRECTOR OF RENT STABILIZATION, ET AL.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners respectfully pray that a writ of certiorari may issue out of this court directed to the United States Emergency Court of Appeals to review the final judgment of that Court in an appeal docketed in that Court as No. 611, which affirmed a judgment in favor of the Respondent entered by the Office of Rent Stablization of Washington, D. C.

Summary Statement of Matter Involved

On June 28, 1952, (TR 66) landlord Elfenbein purchased the premises 4414-16 N. Malden Street, Chicago 40, Ill. from Anten L. Hybl and made the first payment on the mortgage

on July 29, 1950, (TR 66). The building contained six large apartments. One of them became occupied by Elfenbein; the other five were occupied by long time tenants, from 10 up to 25 years.

One of the apartments was occupied by co-tenants Corbin and Jackson and Jackson's sister, Carrie, who was blind, had pernicious anemia and was 88 years old.

At the time of purchase two contests were going on between the Jackson household and Hybl. As Jackson was past 80 and had heart trouble, the contests were conducted mainly by Corbin (Corbin and Jackson were cousins and long time partners. Corbin had occupied an adjoining apartment with his mother. Some time after his mother's death he had moved in with Jackson as co-tenant.)

Both contests overlapped the date of purchase for a long time in both directions. One was a forcible detainer action in the Municipal Court. The other was an OHE action for reduction of rent.

A. Lawrence Lenit, a lawyer and cousin of Elfenbein was agent in the purchase. Landlord Hybl acted in both contests. On Aug. 24, 1950, Corbin won the ORS contest. On Oct. 19, 1950 he won the Municipal Court Contest and paid seven months back rent.

On September 1, 1950, the date when the reductions in rent from the ORS orders of Aug. 24, 1950, became effective, Elfenbein commenced personally to collect rents. Except in the case of one tenant, the Clocks, Elfenbein refused to recognize the reductions, and collected overceiling rents for 19 months from the other four tenants. At the end of the 19 months he notified them to pay the legal rents beginning with April, 1953. On Feb. 6, 1952, he had started action in the ORS in Chicago, for certificates of eviction against all the tenants in order to convert to smaller units. In the following March the tenants had notified the ORS

of the overcharges. Hence, the reduction in rents. Elfenbein swore under oath at this time that he then learned for the first time of the ORS orders of Aug. 24, 1950, reducing rents, although all the tenants swore (Tr. 82) that they had notified him of the matter 19 months before, at the time the orders were issued.

On May 13, 1952 certificates of eviction were issued to Elfenbein to convert to smaller units immediately: to make 10 units out of five of the six apartments.

On June 2, 1952, the complainants appealed to the ORS in Washington against the validity of the certificates on the ground of bad faith with regard to the tenants. Landlord replied that the only issue of good faith involved was did he really intend to convert.

On July 31, the ORS in Washington denied the appeal, but the certificates were suspended for ten days thereafter by rent procedural regulation 2, Section 26.

On August 2, 1952, tenant Earle R. Jackson died of heart trouble in three hours through overexertion in this matter.

On August 5, in spite of the ten days stay, landlord started forcible detainer actions against all the tenants.

On August 11 (the 10th was Sunday) the tenants filed further appeal on the good faith issue with the U. S. District of Columbia Court.

On August 30, they filed again on the same issue in the EmCA.

On September 5, 1952, the Municipal Judge in Chicago held for the landlord, and gave the tenants ten days to vacate, or 5 days to post appeal bond. This was done in spite of the filing in the Em[illegible] of Aug. 30 which automatically suspended the certificate (Rent Procedural Regulation 3, Section 26(b))

Tenants Wm. I. Clock, Jennie E. Dargel, and Arthur J. Koch moved out on Sept. 17, Oct. 2, and Oct. 17, 1952 respec-

tively. On Dec. 17, it was ordered that these three tenants be retained as complainants.

On Dec. 17, also, the EmCA printed an Opinion stating that these tenants were properly filed in their Court. On December 27, 1952, it was also ordered that Carrie Jackson and David Corbin be joined as complainants. (Earle R. Jackson and David Corbin were cousins and long time partners. Corbin had occupied an adjoining apartment until after the death of his mother, when he moved in with Jackson as co-tenant (Tr 68)). On January 8, 1953, Carrie Jackson was made the personal representative of Earle R. Jackson, Deceased. (R. 124)

On Jan. 19, 1953, after an oral hearing at 1212 Lake Shore Drive in Chicago on the subject of continued attempts at eviction in the local courts, a restraining order was issued against Elfenbein, to cease such attempts.

On March 23, 1953, there was another oral hearing at the same place. Here the ORS attorney stated orally, in substance, that the ORS and complainants agreed upon the law, but that the ORS decision had rested on the matter of credibility, and on that ground they had decided for the landlord, that they had had to speculate from the nature of the case, but they had done the best they could under the circumstances.

On May 12, 1953, (R. 127) the EmCA printed an Opinion sustaining the landlord and expounding the applicable doctrine of good faith. On this doctrine the complainants had thought that they were in agreement with the ORS (Washington) while in reality they were far apart. Permission was granted the complainants to file for a rehearing on June 5, 1953. The petition for the rehearing was denied on June 15, 1953.

The basic contention of the Petitioners is that Respondent Elfenbein has used the threat to evict to convert to smaller units, to revoke an OHE order reducing rents, to avoid the

obligations of decorating and repair, to infringe on other rights and to prevent complaints to the OHE.

To substantiate this statement and to show that the doctrine of good faith will bar conversion under these circumstances, is the main object of this petition. Incident to this purpose and in the public interest is sought a ruling on the applicable doctrine of good faith. A ruling is also asked on the question whether perjury, which is free from prosecution by the aggrieved one, when practised before the ORS, is still so protected when practised before the Supreme Court. A third ruling is asked: is confidential evidence, which is allowed the ORS, still allowed to be kept confidential before the Supreme Court.

Jurisdiction

The judgment of the U. S. Emergency Court of Appeals was entered on May 12, 1953 and Petition for rehearing was denied on June 15, 1953. The jurisdiction of this Court is invoked under the Defense Production Act Amendments of 1952, Public Law 429, Section 408 (c).

Questions Presented

1. The applicable law.

2. Did landlord use the privilege to convert to revoke an OHE order reducing rent, to avoid the obligations of decorating and repair, to infringe on other rights, and to prevent complaint to the OHE? Did he do this things knowingly and wilfully?

3. Has the ORS been partisan?

4. Has landlord violated Reg. 3, Section 26(b) and Regulation 2, Section 26? Is such violation part of bad faith?

Reasons for Granting of the Writ

1. The public interest. The abuse involved has been nation wide. It will continue to be widespread in defense

areas. When that war comes that history says always follows an armament race, said abuse may well become nationwide again. Widespread as the abuse here typified has been, it is the first of its kind to ever reach the Supreme Court. The setting for and cause of the abuse rests on the following circumstances:

When Congress granted the privilege to convert to smaller units and go free of controls, leaving other residential property still controlled and unable to compete, a legal privilege was created what could be, and has been, abused on a nationwide scale.

It put in the hands of the landlord that most potent of all rent control powers, the power to evict, and also, what is the most evil aspect of that power, the power to levy blackmail by the threat to evict.

Out of this enforcible threat to evict has grown the worst abuse and worst racket of rent control.

Here it has been used to revoke an order of the OHE reducing rents, to avoid the obligations of decorating and repair, to infringe on other rights and to prevent complaint to the ORS, and then having fleeced the tenants of over $1500 (their claim, Landlord admits over $800.00) proceeded to seek certificates of eviction against them all to convert to smaller units. A clear interpretation of the law in this matter would be much in the public interest.

2. Justice for the Petitioners.

3. A precedent that will protect others from the same injuries.

The landlord has used the threat to convert (Tr. 89) to revoke an OHE order reducing rents, to avoid the obligations of decorating and repair, to infringe on other rights and to prevent complaint to the OHE.

Mr. Morris A. Lieberman, General Counsel for Region 6, on May 15, 1952, told Corbin, that under circumstances such

as are exemplified above, he would hold for the tenants. He added that the applicable law was Section 206(h) of the Housing and Rent Act of 1947. He intimated that there was no need to prove motivation, or even discuss it in a condition of this kind. (This was just two days after the inexperienced Mr. Turek had decided against the tenants. Mr. Turek had replaced the long experienced and capable Mr. Moses, shortly before the tenants' hearing of May 7, 1952. Not long after the hearing Mr. Turek left the service. Mr. Moses had been promoted to the Regional Office.)

Mr. Lieberman has had much experience in such cases. For a long time appeals from the Chicago Area went first to him and his assistants. This was discontinued for the sake of economy.

2. Certainly Congress never intended that the privilege to convert should be used as a tool for blackmail. It is a sound legal maxim that the misuse of a legal privilege shall bar the violator from its lawful use. The Court will recall the three unlawful evictions obtained, and more attempted, by the misuse of this privilege.

3. There is another criterion that upholds the tenants, that is the main use of the Cook County Rental Advisory Board. Their decisions have no legal force, but the ORS has never reversed them. That criterion is the public interest.

A conversion that evicted long time residents, as here, the old, the sick, the blind; that housed no more people, as here; that deteriorated adjoining property, as here; such a conversion is not in the public interest, surely.

According to Morris A. Lieberman the Applicable Law in This Case (206 (h) of the Housing and Rent Act of 1947)

Proof that the interpretation of this law, as practised in Region 6 and elsewhere, in such cases as this, is the only equitable interpretation.

Deeds, actions, realities are what a wrong doer should be judged by, and not by how much of a protest the aggrieved one puts up. Certainly the right to redress should rest upon the wrong, and not upon the victim's reaction to the wrong. A cat picked up by an eagle would put up an awful fight, while a rabbit would submit meekly to destruction, yet the Judge in the Great Beyond would not regard the cat's case as any better than the rabbit's.

When Congress wrote the words "go or propose to go" into Section 206(h) of the Housing and Rent Act of 1947, they not only meant that the legal privilege to convert should not be used for retaliation, but that also, that it should not be used as a means for overcharging, underservicing, dominating, preventing complaint, or in any other unlawful way. In other words, as stated above, Congress never intended that the privilege to convert should be used as a tool for blackmail. And the sound legal maxim that the abuse of a legal privilege shall bar the violator from its lawful use, not only applies here but Congress intended that it should.

To hold otherwise would defeat the purpose of the law, namely: to protect the weak against the strong.

Let us deny this and follow where the denial leads. The Great Judge, aforementioned, in the cat and rabbit cases, would say to the rabbit: you put up no fight; the eagle wasn't mad at you; you were just another meal; so far as you are concerned, to quote Judge Maris; the eagle was flying high; you have no case: on the other hand, the cat made the eagle good and mad; I hold for the cat.

Thus our denial makes the judgment rest, not on the wrongs suffered, which were equal for both cat and rabbit, but on the state of mind of the eagle, and instead of being protected the more, the weak is penalized for his weakness.

Now let us suppose in the present case that the landlord

has used the privilege to convert as a tool for blackmail; that the tenants act like the rabbit; and that he fleeces them by overcharges and under services of more than enough to obtain evictions to start him on a career of conversion, which he really means to carry on with. He has no more feeling about the tenants than the eagle had about the rabbit. They were merely stepping stones. He is not using conversion as a means of getting even. He has nothing to get even for. And, therefore, as his victims have not aroused his anger, the issue is decided against them.

Next suppose that the tenants act in the above case, not like the rabbit but like the cat, and though the landlord still manages to fleece them, they make him so mad in the process, that the conversion that he really intends, becomes secondary to his desire to get even by evicting. The dominating motive being revenge, eviction is denied.

In both the cases discussed just above, the rabbit case and the cat case, so to speak, the same wrongs have been suffered by the tenants, the privilege to convert has been violated in the same way. Yet in the cat case, eviction is denied: in the rabbit case, it is granted. Judgment was meted out, not on the basis of the wrongs done, but on the degree of anger produced in the wrongdoer by the tenants reaction to the wrong.

In both cases the landlord has been guilty of the same identical wrongs, and yet it is not the wrong that decides the issue, but the state of mind of the wrongdoer, who, if we accepted this narrow interpretation of 206(h), could violate the legal privilege to convert with impunity, so far as affecting his right to convert was concerned, so long as he was cold blooded enough to hold his temper against tenant reactions.

In such cases as this, 206(h) of the Housing and Rent Act of 1947, properly interpreted, means that:

The use of the privilege to evict to convert shall not be used either as deed to punish; or as threat to prevent complaint, to overcharge, to underservice, or to levy blackmail of any kind. All of this is implicit in 206(h). It has been so used in Chicago and Region 6 for years. Everywhere else, also, we believe.

Common sense would read this meaning into the act. Even if it did not, the sound legal maxim that the abuse of a legal privilege shall bar the violator from its lawful use, would put it there. Congress never intended that the privilege to convert should start landlords off on a career of blackmail.

By use of landlord's own words of admission and facts beyond question by either side, the following pages prove abuse of the privilege to convert by the landlord, and partisanship by the ORS in this case.

Elfenbein Knew of the One Contest and the Municipal Contest Before June 28, 1950, When He Purchased

Lawrence Lenit (Tr. 69, 98, 83, 86), 100 N. LaSalle St., Chicago, Ill., lawyer for Elfenbein in the purchase, cousin of Elfenbein, claims to be agent for a number of buildings and owner of several; was agent for Elfenbein in the purchase.

He was, therefore, obligated to look into the status of the premises, 4414-16 Malden, before his client and cousin obligated himself to pay the purchase price ($32500 according to the Federal stamps on the deed).

Therefore, unless he was grossly derelict in his duty to his client, Lenit knew *before* June 28, 1950, the date of purchase, that the second apartment north (Jackson & Corbin) was not bringing in any rent on account of two forcible detainer suits that were consolidated (Tr. 67, 99 & 68), brought against them by the former owner, Hybl.

He must also have learned that the grounds for these suits were refusal to allow entry (a pretext to keep going after the judge said to wait on the decision of the OHE), and refusal to pay a certain rent increase, that had been granted previously by the OHE on a Hybl hardship petition (Tr. 68, 67, 99).

He must also have learned that the aforementioned rent increase was being contested in Washington in OHE appeal 8586.

He must also have learned what reduction in rent would ensue if Jackson and Corbin won.

Outside of the sure means that a lawyer has of determining these matters, there were simple obvious ways that actually pressed upon the attention, ways that are apparent from the following facts:

None of the tenants made any secret of these contests.

The janitor knew about them.

They were common gossip in the neighborhood, for both contests had been going on for several months before the date of purchase (Tr. 67, 99, 69).

For a prospective purchaser not to know about them was a practical impossibility.

Common sense says that he certainly knew about both contests before the date of purchase.

Moreover, after purchase, how could he have been so blind to his own interests as not to have learned the true meaning of both these contests, since each contest continued for a long period after purchase; the OHE contest *continued one month and 26 days* thereafter, and the court contest *continued 3 months and 21 days* thereafter, and involving,—surely a pressing matter—non-payment of rent (Tr. 68, 67, 99).

The ORS Order of Aug. 24, 1950 Reducing Rents (Appeal 8586) Proof That Elfenbein Knew of It and That the ORS Was Partisan.

The OHE order of Aug. 24, 1950, reducing rents (appeal 8586) existed. If it existed it was mailed. If it was mailed, it was mailed to each and every tenant affected, as well as to the landlord. For it is the invariable custom for the OHE to mail such orders to each and every one affected thereby. It is not mailed only to the landlord and the landlord trusted to notify the tenants. Therefore when each and every tenant swears that he duly received his copy of said order, it is reasonable to regard the fact that he did receive said copy, as established (Tr. 82, middle of page. Incidentally, the attention of the Court is called to the fact that Turner, lawyer for Elfenbein, asserted verbally before them, that the tenants received no such orders. This was on March 23, 1953, at 1212 Lake Shore Drive, Chicago). The tenants can produce said orders, if necessary.

The rentals set by the Hybl (former landlord) hardship petition grant were in dollars:

60.00	75.00,	69.50,	69.50, and 75.00 for, respectively:
Dargel,	Giannakis,	Koch,	Clock, and Jackson-Corbin.
57.50,	71.88,	63.25,	69.00 and 62.50

were the corresponding amounts both before the hardship grant and after the OHE order of Aug. 24, 1950, reducing rents, which cancelled that grant. The lower line of figures were, therefore, the ceiling rentals, beginning September 1, 1950. The upper line of figures were the basic ceiling rentals collected by Hybl, at the time that Elfenbein purchased the building.

The above figures are a matter of record and beyond question.

Elfenbein admits that he knew the first line of figures above (Tr. 10, 1(a), first sentence; and elsewhere).

Consequently the $69.00 paid September 1, 1950, by Clock (Tr. 74, lower check), showed a basic 50 cent reduction in ceiling rent which Elfenbein could not have failed to notice. The $7.00 increased occupancy charge against Clock was a deal between Hybl and Clock. It was, I believe, extra legal, as the increased occupancy was Clock's daughter and her child, and not a paying subtenant.

Elfenbein was also put on notice what the 2nd line of figures above was; by the copy of the Hybl hardship petition that Corbin loaned him (Tr. 86, 3rd paragraph up), and that 2nd line of figures were, as stated, the ceiling rents beginning September 1, 1950.

Moreover, as before stated, Lenit must have in the beginning have ascertained for Elfenbein what the ceiling rents would become, if Corbin and Jackson won.

Therefore, for all these reasons, Elfenbein certainly knew that the $69 that he collected from Clock was a 50 cent reduction from the basic ceiling rental that was collected by Hybl. Very probably he thought the amount so small that it was not worth making a fuss about, as he did in the case of the others. However the Clocks and Elfenbein were friendly in the beginning as the son, James Clock, was a salesman who called on him: was looking for a better location for his store.

The following sentence taken from the ORS brief of March 20, 1953, page 21, 11th line down, convicts the government of being a partisan for the landlord and goes far toward convicting the landlord of falsehood at the same time:

"It is clear that certain increases in the maximum rents were first granted and then revoked, and that direct notice thereof was mailed to the former landlord."

The purpose of this sentence was to bolster up the landlord's claim, the claim of Elfenbein, that is, that he know

not of this notice. I am restating this sentence as it would have been stated by one seeking truth and impartial justice:

"It is clear that certain increases in the maximum rents were first granted and then revoked, and that direct notice thereof was mailed to the former landlord, and that direct notices were also mailed at the same time to the tenants affected thereby, each and every one of them, as is our invariable custom".

Hybl had, perhaps, a motive for suppressing the notice, but the tenants had an excellent reason for telling about it. That the tenants would tell Elfenbein about it, and as a matter of course did, is a foregone conclusion (Tr. 82, middle of page).

Preliminary to further proof that Elfenbein knew that he was collecting overceiling rents from the very beginning, is this relevant statement:

Right after the arrival of the OHE order of Aug. 24, 1950 (appeal 8586), reducing rents, Elfenbein told Corbin (Tr. 84) that if anyone did not treat him fairly, he would evict him as soon as he could. He said, with emphasis, that he did not consider the $62.50 that Jackson and Corbin were paying fair, in spite of the fact that the OHE order of Aug. 24 reducing rents, established it as the ceiling rent. He further made it plain that he did not consider the order reducing rents fair to him in any respect. Of course this news spread to everybody as well as was delivered by Elfenbein first hand, wherever he thought it necessary. This preliminary statement is, of course, assertion, but it is upheld by succeeding facts and events.

Consider page 70 of the transcript. No one questions the facts there displayed.

Jennie Dargel gave Elfenbein a check on Sept. 1, 1950,

marked rent for September, 1950, and made out for $57.50. Elfenbein gave her a receipt for $57.50 marked, on account. Next month she paid Elfenbein $62.50, $60 of it as rent for October, and $2.50 to increase the September rent to $60. As already stated, these are all facts, unquestioned by anybody. Moreover $57.50 was correct; $60 an overcharge. Everybody admits this also. Now comes the disagreement.

Mrs. Dargel said she paid the overcharge because she was threatened. Elfenbein said she paid it because her lawyer told her to and denied threatening her. Now, consider the facts: she offered him the correct amount, and he, at least, questioned that it was correct. Otherwise she would have had no motive for going to a lawyer (lawyers cost money). But Elfenbein,—his story,—had made no threat, just a polite doubt that $57.50 was correct. Her lawyer had looked the matter up with the OHE and had found (necessary consequence of the Elfenbein story) that the correct rent was $60. But the correct amount was not $60. It was $57.50. Therefore the issue between Mrs. Dargel and Elfenbein was not whether or not $57.50 was the correct amount, but was she, or was she not, going to pay the $60 that Elfenbein demanded. A copy of the OHE order of Aug. 24, 1950 (appeal No. 8586) reducing rents, was mailed to Mrs. Dargel (and to all others affected, as is the invariable custom of the OHE). Mrs. Dargel states under oath that she showed this order to Elfenbein in explanation of the $57.50 that she offered him, that she let him have it to show to his lawyer and that she was unable to get it back. Certainly if she tried to pay $57.50 on September 1, 1950, instead of the $60 that she had been paying previously to Hybl, and if Elfenbein questioned it, she would have done just what she said she did, shown him the order in explanation.

Herein, by simple logical deductions from established

facts and practical certainties, we have proved to the satisfaction of any disinterested jury, that the falsehoods were Elfenbein's and not Dargel's.

Instead of using established facts and practical certainties (facts as evident and as available to the ORS as to the writer) in judging the Dargel letters, the ORS draws from phrases taken out of context, a conclusion which is, in substance as follows: that if Elfenbein said what the Dargels say he said, it would have given the Dargels no motive for paying overceiling rent, or for not complaining to the OHE, or for humoring him in any manner. This is the remark under criticism here:

"Even while paying this additional rent, Mr. Elfenbein several times told us that he was going to cut the building into small apartments."

The Dargels are women, not lawyers skilled in accurate statement, but they have plenty of common sense. If they had thought that paying overcharges was useless, they certainly would not have done it. The talk of cutting up was threat, not a promise, to keep the Dargels in line as they had put up a fight. Moreover, he was still angry after they had submitted to overcharge, because they had insisted on writing on the face of their checks, what they were for (Tr. 88, last sentence).

This, continues the ORS (page 19, ORS brief), was preceded by the general statement that Jennie E. Dargel "knew that attempts to pay the ceiling rents were met by threats of eviction," and followed by the statement that the landlord "had said" to unidentified persons "that if anyone complained to the Office of the Housing Expediter, he would cut up their apartment and evict them".

We wish to repeat here that the Dargels are not lawyers, that in court, as in patent law, every one has a right to use

his own language. I may add the threat to do a thing if——, and the promise to do that thing, are frequently used interchangeably by people not skilled in expression. What is meant is all that counts, and certainly the Dargels would not have paid the overcharge that had been contested so long, if they believed that there was no advantage in so doing. The sentence omitted in Tr. 28, that is present in Tr. 7 certainly involves no contradiction or misunderstanding to anyone who considers the context in the light of events. It is simply a case of 'promising to do' used in place of 'threatening to do if——'. Mrs. Dargel may have omitted it in Tr. 28, because some one criticized it on that ground.

By reading into the unskilled phraseology of the Dargels which common sense would tell anyone that they did not intend, the ORS concludes that they were not telling the truth.

Compare this tea leaf method of investigation, with the reasoning from established facts and practical certainties, beginning on page 6 of this discussion, that upholds the Dargels and convicts Elfenbein of falsehood.

The ORS continues that the Clock letter (Tr. 5) and affidavit (Tr. 31) are not identical. Why should they be? Certainly they do not contradict one another. ORS makes same comment on Jackson letters (Tr. 6 & 30). Also, same reply to said comment. The ORS criticism on the Giannakis letters (Tr. 8 & 27) is that she denies threat to complain. Does that make Mrs. Giannakis untruthful? The ORS continues that the letters and affidavits, Tr. 5-9, 28-31, lean on one another for support. The letters and affidavits say very definite things, each one of them does, and needs no aid from the others to elucidate its meaning. The ORS continues that the terminology of these letters is so similar as to suggest the absence of spontaneity: for example the

phrase "cut up and evict" or some form thereof, appears with surprising uniformity (Tr. 6, 7, 8, 9, 26, 27, 29, 30, 31, 62). The words lean and spontaneity are such vague and tenuous charges that I am surprised that a disciple of accurate speech would use them. As to the phrase "cut up and evict", it is common parlance around here, altho it may jar somewhat on the ear of a stylist. Common sense would say that tenants, associated together in a common cause, would be likely to use similar terminology, to say the same things.

There is nothing in the phraseology discussed that would establish one discreditable thing against the tenants.

This conviction by surmise and innuendo is manifestly to sustain the landlord, right or wrong. It ignores the action, realities and established facts, for said facts sustain, in essence, every charge that the tenants make and convict the landlord of falsehood.

The only facts that the ORS quotes and does not deprecate, are the plans, permit, etc., that indicate that the landlord really meant to convert. Note in the following how facts that favor the tenants are treated:

He collected overceiling rent and gave receipts proving it. True, says the ORS, the receipts prove he did it innocently.

Direct notice was sent to the landlord reducing rents. True, says the ORS, but they went to the old landlord, Hybl, who suppressed them. (Not a word about what the ORS knew to be its invariable custom, namely: that direct notices also were mailed to all affected thereby, to each and every tenant.)

Gwendolyn Dargel swore (Tr. 71) that she gave landlord Elfenbein her copy of the above notice. True, says the ORS, that is what she swore, but what did Gwen's mother say at an earlier date: "even while paying this additional rent,

Mr. Elfenbein told us several times that he was going to cut the building into additional apartments," and, therefore, continues the ORS, after your mother said such a thing as that, who are you to contradict a landlord? He denies that you gave him a copy, or put him on notice in any way.

The tenants all swore (Tr. 82) that thy received these notices reducing rents, and that they all put the landlord on notice thereabout. No comment, replies the ORS.

But, say the tenants, it is your invariable custom to mail such notice to all concerned, and we all received them. No comment, replies the ORS.

And, add the tenants, Corbin spent over a year winning these orders reducing rents (Tr. 87) and we all helped. Having fought for victory, why wouldn't we want the fruits of victory, and how else could we get them without notifying the landlord? No comment, replies the ORS.

And Corbin and Jackson were in the Chicago Municipal Courts for seven months, the tenants persist, defending against forcible detainer actions, brought by the former owner, Hybl, (11 court hearings, Tr. 67, 99, 68, 98). The proceedings overlapped the date of purchase by 3 months and 21 days. The reason for these actions were the refusal of Jackson and Corbin to pay a certain increased rental, wherein they were sustained by the OHE on August 24, 1950, and by the municipal court on October 19, 1950, and the refusal to allow entry. (The same judge held for the defendants in both actions at this same time, October 19, 1950. That the two actions were consolidated is shown by the two half sheets, Tr. 67, 99. See also Tr. 68).

Lawrence Lenit, attorney for Elfenbein in the purchase, continue the tenants, was present as observer for landlord Elfenbein, was attentive to what was going on, stood at the bar with the rest. (Tr. 69) What Lenit learned, Elfenbein learned.

That's what *you* say, replies the ORS.

Robert A. Kahn, our attorney of record, says the same thing, answer the tenants. (Tr. 69)

It doesn't overcome the denial of landlord Elfenbein, says the ORS.

But, answer the tenants, Mrs. Elizabeth Quinlisk, the original owner, a landlord, mind you, and still a landlord, a landlord all her life, in fact: she says the same thing (Tr. 98) and adds that she talked to Lenit at some length.

The denial of landlord Elfenbein still stands, answers the ORS. (Even the ORS reverence for a landlord won't overcome its allegiance to landlord Elfenbein.)

But, say the tenants, landlord states (Tr. 40) that Corbin told him that the judge told Corbin to pay $75 per month. Now the ORS and everybody else admits that $62.50 is the correct amount. Doesn't this contradict the landlord?

No comment, answers the ORS.

On page 10 of the landlord reply brief filed March 21, 1953, landlord states that this court action had nothing to do with ceiling rents, but involved only the right of entry. This statement, says Corbin, is obviously untrue, for two issues were settled on October 19, 1950, as is proved by the two half sheets, Tr. 67 & 99, certified by Chicago Municipal Court Clerk, Joseph Gill, Tr. 68 & 100. These half sheets show that they both held for the defendants, on the same date, October 19, 1950, before the same judge (Donoghue). The '268 one fixed the Jackson and Corbin rent at $62.50 from August, 1950, on. The '999 one was on the right to refuse entry. Kahn, the Jackson and Corbin attorney of record, swears to this (Tr. 68). He is a practicing attorney in Chicago. If he were lying, the Chicago Court Record would convict him with certainty. Would Kahn risk his license and his livelihood in such a lie?

No comment, answers the ORS.

At the top of page 21 of the ORS brief is the following statement of the ORS, a statement of fact:

"Despite all of the difficulties alleged and all of the threats, no complaint was made to the Area Rent Office."

The ORS comments on this fact as follows:

"It is unusual . . . where the tenants apparently knew of the threats to, and problems of, each of the other tenants."

Common sense would say that where tenants had been associated together in a common contest ((Tr. 87), 4th line up), and interchanged information, they would be more likely to follow a common policy, than if the contrary were true.

At the bottom of Page 16 of the ORS brief, the ORS states, in substance, that repeating assertions does not make them more believable. Of course, for the same person to swear to the same thing five different times does not make the thing sworn to more believable, but for five different respectable families to swear to that same thing, certainly does.

Long time tenants—in this matter of complaint discussed above—could reasonably be expected to try to keep their complaints all in the family, so to speak, to avoid the onus of posting the landlord as delinquent with the ORS, for who would protect them when the ORS is gone? The tenants were more interested in the continuance of their tenancy than in the satisfaction of their grievances. The landlord, aware of this fact, increased his encroachments with time. Beginning with rent overcharges, he, a few months later, tore down the back fence and wrecked the yard with his

car. He refused decorating and necessary repairs, culminating in tricking the Giannakis in a $400 expenditure which was mainly his obligation.

Further evidence that Elfenbein knew what the Jackson and Corbin ceiling rent was after August 24, 1950, as well as before, is given by the receipts shown in Tr. 59 and 60, by Tr. 85, top of page and also 2nd paragraph down.

Several arguments have been given, arguments that rest upon grounds that are independent of what either landlord or tenant may say, and arguments that need no help from one another, to establish that Elfenbein had guilty knowledge that he was collecting overceiling rents, from the moment that he commenced to do so.

The argument of the ORS that the fact that the landlord gave receipts for his overcharges is evidence of his innocence, is, in our opinion, purely partisan.

He wanted these overcharges very badly. They added nearly $2000 to his borrowing power on the building. He could not get them without giving receipts. Moreover giving receipts would help maintain his pose that the overcharges were legitimate. Remember he had records from the time of purchase that the overcharges were legitimate then. That he still maintains this pose in the face of certain proof to the contrary, shows that he had cogent reasons.

His offer to give back the overcharges as soon as (his story) he learned about them, is also advanced by the ORS as indicating his innocence, ignoring the time and circumstances of the offer.

Only after 19 months of collecting overcharges, when, defending eviction, the tenants notified the ORS thereof, did he make the offer. He was in the position of the thief caught with the goods, with this amusing difference, that the thief caught would not quibble about giving the loot back, whereas the landlord argued that he should be allowed

to keep it, part of it anyway, however, he added, he was willing to do as the ORS said, as if he had a choice.

Proof of underservices. Admit, $390.00 deficit. Knowledge thereof not denied. Sophistry of attorney thereabout. (Tr. 17) As to decorating, Elfenbein admits in his affidavit, beginning on Page 43 of the transcript, what adds up to a $390.00 deficit in legal allowance for decorating.

Elfenbein did no decorating whatever himself. What little he gave was allowance for work done by the tenants. The legal allowance is 2/3 of one month's rent per year.

The decorating to which the tenants were entitled and the allowances which Elfenbein claimed he gave, are itemized as follows:

1. The Dargels had a right to ..... $ 80.00
   Elfenbein (Tr. 44) claims to have given $24.
   Mrs. Dargel said the $24 was for plastering, not decorating.
   Deficit admitted by Elfenbein $56.00
2. The Giannakis had a right to $100.00
   Elfenbein (Tr. 44) claims to have given $50.
   Mrs. Giannakis says she took it away from him. (Tr. 91, 97)
   Deficit admitted by Elfenbein $50.00
3. Koch had a right to ..... $ 92.00
   Elfenbein (Tr. 45) says Koch didn't ask: volunteered.
   Deficit admitted by Elfenbein $92.00
4. The Clocks had a right to ..... $ 92.00
   Elfenbein (Tr. 46) says they asked too much: then volunteered.
   Deficit admitted by Elfenbein ..... $ 92.00
5. Jackson and Corbin had a right to $100.00
   Elfenbein says (Tr. 46) never had access.
   Deficit admitted by Elfenbein $100.00
   Total deficit admitted by Elfenbein $390.00

On Tr. (46) Elfenbein admits, under oath, that he gave Clocks no decorating. On Tr. (17) his attorney, Turner, makes the vague statement that landlord was required to do $200.00 in decorating because of leaky roof. Of course he did not say he did it, so he escapes perjury, but the intent is plain. Other expressions, such as substantial conformity to law, occur frequently.

Elfenbein makes no claim in his affidavit (Tr. 43) that he did not know his obligations as to decorating.

Summary of Reasons for Granting Writ

Criteria that have been used, or usable, for granting or denying certificates:

1. According to Morris A. Lieberman of Region 6.
2. Certificates not intended as tools for blackmail.
3. Public interest, the main standard of the Cook County Rent Advisory Board.
4. Proof that the good faith doctrine of the EmCA is inequitable, whereas above works with fairness.
5. ORS criteria held secret.

Proof of underservices. Admits $390.00 deficit. Knowledge thereof not denied. Sophistry of attorney thereabout (Tr. 17).

Proof of overcharges. Landlord admits collecting them for 19 months (Tr. 17), pgh 11, until after he received written notices. Notices mailed in March (Tr. 5, 6, 7, 8, 9).

Proof of amount of overcharges (Tr. 5, 6, 7, 8, 9) and legal rentals before and after the OHE order of August 24, 1950, reducing rents:

	Before	After	Proof
Corbin and Jackson	75.00	62.50	Tr 59, 60, 69
Dennis Giannakis	75.00	71.88	Tr 14, pgh 2
Wm. Irving Clock ($7.00 increased occupancy charge, daughter and child plus ceiling $69.50)	76.50	69.00	Tr 74
Jennie E. Dargel	60.50	57.50	Tr 7, 43
Arthur J. Koch	69.50	63.25	Tr 9, 15

Omitting Clock, the difference between these above and after amounts multiplied by 19, is the total overcharge, or $477.47 total.

The landlord knew from beginning that he was collecting overceiling rents.

The ORS has been partisan.

Landler Elfenbein has used the privilege to convert as a threat to revoke an OHE order reducing rents, to avoid the obligations of decorating and repair, to infringe on other rights and to prevent complaints to the OHE.

Under Section 206(h) of the Housing and Rent Act of 1947, as applied in the Chicago Area, and elsewhere for years (see page 9 herein) this is more than sufficient to bar conversion.

The admitted overcharges in rent are $438 (page 9 herein).

The admitted decorating deficit is $390 (page 24 herein).

The admitted overcharge in rent and underservices are $824 (The tenants say over $1500).

The $295 check to plasterers (Tr. 72) was for rehabilitating that was Elfenbein's obligation. Elfenbein disputes the amount.

Let us consider the admissions only; this much of the tenants case has been proved

> He collected overcharges that revoked the OHE order of August 24, 1950, reducing rents, for 19 months and admits it.
>
> He admits that underservices amounted to $390 and makes no claim that he did not know of his obligation in the matter. Although he denies it, it has been abundantly proved that he collected the overcharges in rent, knowingly and willfully.

Corbin spent over a year winning the reductions in rent which the landlord collected as overcharges. All the tenants

helped (Tr. 87, 4th line up). Why then did they give up their victory? Did the landlord offer them something in return? The fact that he denied that he knew that the overcharges were overcharges proves that he did not. As time went on, he tore up the back yard with the wheels of his car, which he parked there. Later, he strewed ashes. His encroachments increased with time. He ended trying to evict everybody.

Now, here is $828 that landlord admits that he got unlawfully from the tenants. (The tenants say over $1500.) He makes no claim that he gave them anything in return. He makes no claim that he did not know that he was underservicing in his affidavit (Tr. 43). His encroachments increased with time. Note the Giannakis $295 check (Tr. 72) near the commencement to evict date. And yet no one complained to the ORS.

How did he accomplish this?

The tenants all swear that it was by the threat to cut up and evict, if they did not treat him fairly.

Suppose that what the tenants say be ignored, what power did the landlord have at his disposal to accomplish all this except this threat.

The ancient wisdom: judge a man by his deeds never had a better place for application.

Overcharges, underservices, increasing encroachments, all ending in attempts at eviction, all facts that the landlord admits: look at them for a moment, ignoring what either side says.

Then consider these three things:

1. The only power that a landlord has that could dominate a whole building and prevent complaint, is the threat to convert.

2. The landlord has been convicted of falsehoods.

3. The tenants have not been convicted of one single one.

The threat to convert was made by the landlord to accomplish his unlawful gains. This is sworn to by all the tenants and also that it was used to prevent complaint to the ORS.

(1) alone, above, should establish this, even without the help of (2) and (3).

This, we submit, finishes proving the case, for the tenants.

ROBERT A. KAHN,
135 S. LaSalle St.,
Chicago 3, Illinois,
Atty. for Petitioners.

REX K. NELSON,
416 5th St., N. W.,
Washington, D. C.,
Of Counsel.

APPENDIX A

CONFIDENTIAL RENT MEMORANDA 6

RENT MEMORANDUM 6—I.

REQUIREMENT OF GOOD FAITH IN EVICTIONS

A number of provisions of Section 6 (a) of the Housing and the Hotel Regulations specifically impose a requirement of good faith on the part of the landlord. Even where that requirement is not specifically mentioned, it is nevertheless implicit. The provisions of Section 4 (b) of the Emergency Price Control Act of 1942 are relevant to the problem of good faith. That section reads as follows:

"It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, *or proposes to take,* action authorized or required by this Act or any regulations, order, or requirement thereunder."

The ORS does not give out readily interpretations of the law on evictions. The word Confidential in the upper left hand corner indicated this. Said word is the reason for printing this.

APPENDIX B

EXTRACT FROM RESPONDENT BARR'S BRIEF, FILED MARCH 2, 1952, EMERGENCY COURT OF APPEALS

II. The factual determinations that the landlord had substantiated the grounds for the eviction and that the eviction was sought in good faith are supported by substantial evidence on the record considered as a whole

After the evidential record in the administrative proceedings was closed, independent findings were made by this Respondent that the ground for the Certificates Relating to Eviction had been substantiated and that the certificates were sought in good faith (Tr. 102). Upon these findings

the protest was denied. There being no apparent issue of law drawn between the Complainants and this Respondent, the sole issue presented to the Court by their pleadings and briefs is whether or not the determinations of fact made upon denial of the protest are "supported by substantial evidence on the record viewed as a whole."[1] If those determinations find such support in the record viewed as a whole, they are conclusive upon this Court as provided by the statutory provisions referred to in the margin.

It is believed to be unnecessary to discuss at any length the scope of this standard for review. The meaning of an identical standard contained in the Taft-Hartley Act[2] has been the subject of discussion by the Supreme Court in *Universal Camera Corporation* v. *NLRB*, 340 U. S. 474 (1951), and *NLRB* v. *Pittsburgh S. S. Co.*, 340 U. S. 498 (1951). It may be stated, however, that while the 1952 amendment to the Defense Production Act of 1950 changed the language of the review standard, it is this Respondent's belief that this Court, in common with many courts throughout the land, had in its review of the factual determinations applied a rule which would satisfy the law as presently written. We may now proceed to an evaluation of the evidential record.

The nature of the factual record in this proceeding is such as not to lend itself to demonstration of an ultimate conclusion by logical deduction from established facts. Resort to inference and to culling of the evidence is compelled not only by the basic nature of an inquiry into "good faith" but also by the sharp conflict in the evidence requiring the application of judgments as to credibility. It is clear, however, that the resolution of conflicts in evidence and the evaluation of its weight is the function of this Respondent. See *Rabkin* v. *Bowles*, 143 F. 2d 600 (E. C. A. 1944). There are contained in this record numerous

[1] This is the standard for review established by Section 408(a) of the Defense Production Act of 1950, as amended by the Public Law 429, 82nd Congress.

[2] For a discussion of the rule as it appears in the Taft-Hartley Act, see "Judicial Review, 'Substantial Evidence on the Whole Record'", 54 Harvard Law Review 1233.

allegations to the effect that the landlord deprived the tenants of services to which they were entitled; that he demanded and accepted payments of rent in excess of the legal maximum rents; that he knew of his obligations with respect to the services and maximum rents; and that he threatened the tenants that he would "cut up an evict" them if they insisted upon their rights in these matters (Tr. *passim*). These allegations are repeated in numerous forms. However, mere repetition of factual allegations lends to them no greater weight or acceptability nor does it lessen the difficulties inherent in determining credibility. The landlord has denied that he deprived the tenants of services or that he knowingly overcharged (Tr. *passim*). He alleged that the overcharges were through inadvertence and error and that when he first learned that he had been guilty of overcharges, he offered to refund to the tenants any amount determined by the Area Rent Director to have been received in excess of the legal maximum rents (Tr. 11). The record is clear to the extent that the landlord did obtain plans for a conversion which, under the terms of the Regulation and in the absence of other facts, would entitle him to the relief he sought (Tr. 1, 10) (12); that he secured the necessary permit (Tr. 57); and that he obtained a commitment for financing (Tr. 30-40, 58). While the landlord claims that some work was done in connection with the proposed conversion (Tr. 12), the complainants denied that work "of any consequence" had been done or that materials were on (Tr. 81). However, the record does show a contract for the complete job (Tr. 52-56). Those are, in the main, the significant conflicts in the testimony. If the evidence offered by the complainants were given full credence, their complaint in this Court would have considerable merit for the reason that it would demonstrate a fatal primary motivation on the part of the landlord. On the other hand, if the landlord's evidence is fully believed there was no primary motive other than conversion and indeed not even a secondary motive. In that event the landlord would be entitled to the relief sought. Moreover, the more existence of ill-will which does not provide the purpose for seeking the eviction would not alter the result. It was, therefore,

incumbent upon this Respondent to determine which evidence was credible. Upon denial of the protest this Respondent resolved the question in favor of the landlord. If such resolution was reasonable, there can be no question but that the ultimate conclusion reached upon the protest is supported by substantial evidence on the record viewed as a whole and is, accordingly, conclusive upon this Court. This is true so long as it may be found under this standard of review that the primary motivation was conversion. The more existence of ill-will or failure to comply with the Regulation will not sustain the complaint unless it provided motivation for the petitions for certificates relating to eviction. We may now examine the record to determine the reasonableness of this Respondent's findings upon the basic issue of credibility.

Of great significance are the facts that the landlord did undertake all of the steps necessary to conversion. He employed an architect and had blue prints prepared (Tr. 10); he secured financing commitments (Tr. 58); he obtained a building permit (Tr. 57); and he employed a contractor to do the work (Tr. 52-56). It remained only for him to recover possession. He actually expended the sum of $390.00 (or $480.00) in fees to secure financing commitments (Tr. 58). Although the record reveals no difficulty with the contractor and this Court denied leave to adduce additional evidence (see, order of January 30, 1953) the Complainants still attempt to question the contract in their brief (Comp. Br. 14). However, it must be obvious that the landlord can hardly be held accountable for the vicissitudes in the affairs of his contractor. These real and costly efforts to bring the planned conversion to fruition are entitled to weight in determining whether the landlord has acted in good faith.

One of the most troublesome questions raised by the record was that involved in the clear evidence of overcharges. Did they, in fact, provide the primary motivation? The landlord denied knowledge of the facts which gave rise to those overcharges (Tr. 37, *et passim*) and the tenants attributed to him actual notice of maximum rents (Tr. 71). One of the most significant pieces of evidence to the latter

effect is the sworn statement of Gwendolyn Dargel, apparently the tenant's daughter, made on May 19, 1952 (Tr. 71). But what had the tenant, Dargel, said at an earlier date. By reference to Tr. 7 we find that "even while paying this additional rent, Mr. Elfenbein several times told us he was going to cut the building into small apartments." This was proceeded by a general statement that Jennie E. Dargel "knew that attempts to pay the ceiling rent were met by threats of eviction" and followed by a statement that the landlord "had said" to unidentified persons "that if anyone complained to the Office of Housing Expediter, he would cut up their apartment and evict them." The threat could hardly have had much efficacy after the landlord expressed his purpose even while overcharges were being paid. Most significantly, the affidavit of Jennie E. Dargel, sworn to on June 2, 1952 (Tr. 26), follows the letter at Tr. 7 verbatim until the sentence concerning the landlord's expression of his purpose but omits that sentence. Further into the affidavit, the letter's recital of payment of overceiling rent and endurance of lack of services is supplemented by a statement that such payment and endurance were compelled by threats of eviction. Quite apparently the force of such threats would have been spent by the announced purpose. Similarly, the sentence in the Clock letter (Tr. 5) to the effect that "much complaint" was not made "because complaints were met by threats of cutting up and eviction" is modified in his affidavit to relate such complaints to the Office of Housing Expediter (Tr. 3). It is difficult to so construe the letter (Tr 5). Like additions were made in the affidavit of Earle R. Jackson (Of. Tr. 6 and Tr. 30). It is a legitimate subject for comment that the letter of Mrs. D. Giannakis (Tr. 8) and her affidavit (Tr. 27) denied any threat on her part to complain to the rent control officials. The letters and affidavits lean on each other for support (Tr. 5-9, 28-31). It may also be noted that their terminology is so similar as to suggest the absence of spontaneity. For example, the phrase "cut up and evict" or some form thereof occurs with surprising uniformity (Tr. 6, 7, 8, 9, 26, 27, 29, 30, 31, 62). Despite all of the difficulties alleged and all of the threats, no complaint was made to the Area

Rent Office. While this in itself is not surprising it is unusual where the problem affects an entire building and where the tenants apparently know of the threats to, and problems of, each of the other tenants.

It has been attempted to bring home to the landlord knowledge of the overcharges by the various statements of the tenants and by the presence of his attorney during the trial of an action between the tenant Jackson and the former owner of the building (e.g., Tr. 68, 97). The landlord has emphatically denied such knowledge (e.g., Tr. 43, 48). It is clear that certain increases in the maximum rents were first granted and then revoked and that direct notice thereof went to the former landlord. The record fails to overcome the landlord's denial. Moreover, it is entirely possible that while some of the facts might have been known to the landlord, their significance was not clear to him. The record does not show any earlier experience on his part with such problems. Much reliance is placed by the Complainants upon certain receipts given by the landlord (Tr. 70-74). However, the question must be asked whether a landlord, who has had numerous disputes with the tenants concerning overcharges and who threatened them with eviction if they complained to the authorities, would give such receipts as are set forth in the record. That this landlord gave them cannot be questioned. That he was guilty of wilful overcharges and threats of unlawful action based thereon is open to serious doubt. These parties appeared before an employee of the local Area Rent Office who apparently made his recommendations after listening to them (Tr. 38). The landlord is in business as a pharmacist and must be presumed to be able to understand the nature and consequences of his actions. It taxes belief that he would knowingly have created such objective evidence of violation on his part. It may fairly be found that he did not clearly know the facts. This Respondent reasonably gave credence to the landlord's evidence.

There is much other evidence in the record. To examine in detail each statement, such as whether the tenants patronized the landlord's store (Tr. 39, 65) or shared their gifts of food with him (Tr. 48-49) can serve no useful purpose. It is

sufficient to state that there was ample basis for giving credence to his evidence and thus, there is more than substantial evidence on the record viewed as a whole to support the determination made. Accordingly, that conclusion should not be disturbed.

Conclusion

For the foregoing reasons, the complaint should be dismissed.

Respectfully submitted,

ROBERTA SAUER,
Acting General Counsel,

J. WALTER WHITE,
Assistant General Counsel,

CHARLES P. LIFF,
Chief, Appeals Section,

TOM DAVIS,
Attorney, Appeals Section,
Office of Rent Stabilization.

In the Supreme Court of the United States

October Term, 1953

Office - Supreme Court, U.S.
FILED
AUG 18 1953
HAROLD B. WILLEY, Clerk

No. 181

JENNIE E. DARGEL, et al.;
Petitioners

v.

WILLIAM G. BARR, Director of
Rent Stabilization, et al.,
Respondents

Grant

COPY BOUND CLOSE IN CENTER

MOTION TO SUBSTITUTE

Respondent respectfully advises the Court that by Executive Order 10475 (18 F.R. 4537), effective July 31, 1953, the Office of rent Stabilization was abolished and the powers, duties and functions conferred upon the President by the Housing and Rent Act of 1947, as amended, with exceptions not here pertinent, were ordered to be administered through the Director of the Office of Defense Mobilization; that by Office of Defense Mobilization Order No. 29 (18 F.R. 4597), effective August 3, 1953, the Defense Rental Areas Division within the Office of Defense Mobilization and the position of Director of such Division were established and responsibility for all of the functions under the Housing and Rent Act of 1947, as amended, delegated to the Director of the Office of Defense Mobilization by Executive Order 10475, was delegated to the Director of the Defense Rental Areas Division; and that on August 3, 1953, Glenwood J. Sherrard was duly appointed and is presently the acting Director of Defense Rental Areas Division, Office of Defense Mobilization. Accordingly, respondent moves that Glenwood J. Sherrard, Director, Defense Rental Areas Division, Office of Defense Mobilization, be substituted in the place and stead of William G. Barr, Acting Director of Rent Stabilization, as respondent in the above-entitled cause.

ROBERT L. STERN
ACTING SOLICITOR GENERAL
Counsel for respondent

August, 1953

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Argument	4
Appendix	6

CITATIONS

CASES:

Pemberton Gardens, Inc. v. *Sherrard*, E.C.A. No. 656, complaint dismissed on motion, July 16, 1953 4

Talbot v. *Woods*, 164 F. 2d 493 ..... 4, 5

STATUTES:

Housing and Rent Act of 1947, 61 Stat. 193, Sec. 204, as amended, 50 U.S.C. App., Supp. V, 1894, as amended by the Act of June 30, 1952, 66 Stat. 296, 306, the Act of July 15, 1952, 66 Stat. 637, 657, and by Public Law 23, 83rd Cong., 1st Sess. 3, 4, 6

Defense Production Act of 1950, 64 Stat. 798, 807, 50 U.S.C. App., Supp. V, 2107 3

REGULATIONS:

Rent Regulation 1—Housing, 16 F.R. 12879, reissued 18 F.R. 1266 8

Sec. 181 2

Sec. 191 2

Sec. 193 2

Rent Procedural Regulation 3, 17 F.R. 6091, Sec. 26 ..... 4, 10

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 181

JENNIE E. DARGEL, et al., *Petitioners*

v.

WILLIAM G. BARR, Director of Rent Stabilization, et al.

On Petition for a Writ of Certiorari to the United States Emergency Court of Appeals

---

MEMORANDUM SUGGESTING MOOTNESS

OPINION BELOW

The opinion of the United States Emergency Court of Appeals is reported at 204 F. 2d 697.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on May 12, 1953 (R. 133). On June 15, 1953, a petition for re-

hearing was denied (R. 134). The petition for a writ of certiorari was filed on July 15, 1953. The jurisdiction of this Court is invoked under 50 U.S.C. App., Supp. V, 1894 and 50 U.S.C. App., Supp. V, 2107-2108.

QUESTION PRESENTED

Whether the issues sought to be raised concerning Certificates Relating to Eviction permitting the petitioners' landlord to proceed at local law to obtain their eviction, are moot by reason of termination of Federal rent controls in the subject area.[1]

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Housing and Rent Act of 1947, as amended, Rent Regulation 1—Housing and Rent Procedural Regulation 3, are set forth in the Appendix, *infra,* pp. 6-12.

STATEMENT

Petitioners were tenants in an apartment building in the Chicago (Illinois) Defense-Rental Area (R. 1). Certificates Relating to Eviction,[2] permitting the landlord to proceed at local law to recover possession, were issued for the apartments

---

[1] This is not the question raised by petitioners, who challenge the action of the respondent in granting a certificate relating to eviction on the facts of this case.

[2] Rent Regulation 1—Housing, Sections 181, 191, 193, App., *infra,* pp. 9-10.

then occupied by the petitioners [3] on the ground that the landlord desired possession for the purpose of immediately altering or remodeling the apartments for continued use as housing accommodations in a manner which could not practicably be done with the tenants in possession. The petitioners filed a protest [4] alleging, in main, that the landlord's petitions were not filed in good faith for the reason that they had been preceded by overcharges, decreases in services, and threats of eviction if complaint were made to Federal rent control officials (R. 22-25). The protest was denied upon the finding that the landlord had demonstrated the necessary facts and was proceeding in good faith (R. 102). In a unanimous decision the court below, after consideration of the record, held that the question before the Director was one of fact; that it was his duty to consider the circumstances, to determine credibility and to weigh the evidence; and that the Director's order was sustained by the evidence on the record viewed as a whole.

---

[3] Since issuance of the certificates several of the subject apartments have been vacated (Pet. 3-4).

[4] 50 U.S.C. App., Supp. V, 1894; 50 U.S.C. App., Supp. V, 2107.

ARGUMENT

The case presents merely a factual question of no general importance which clearly does not warrant review by this Court. This appears plainly from the petition for certiorari itself and from the opinion below (R. 127-132).

In any event, since the filing of the petition, additional facts have come into being which show that the case is moot. On July 31, 1953, the provisions of the Housing and Rent Act of 1947, as amended (50 U.S.C. App., Supp. V, 1894) terminated in the Chicago Defense-Rental Area for the reason that the area had not been certified as a critical defense housing area. The effect of eviction certificates before the termination of rent control was to permit evictions. Since termination, no certificate is necessary. The controversy as to the validity of the certificates thus has no consequence at the present time. Nor does the past status of the certificates affect rights and liabilities protected by the saving clause. By reason of administrative review proceedings and successive appeals, the certificates have been stayed since their issuance on May 13, 1952[5] (R. 22, 104), and petitioners were not evicted. Since there is no longer any controversy, the case has become moot. *Talbot* v. *Woods,* 164 F. 2d 493 (E.C.A. 1947); *Pemberton Gardens, Inc.* v. *Sherrard,* E.C.A. No.

---

[5] Rent Procedural Regulation 3, Section 26, *infra,* App. pp. 10-12, provides for a stay of such certificates during administrative review proceedings if filed within the time allowed and pending review by the United States Emergency Court of Appeals and by this Court.

656, complaint dismissed on motion, July 16, 1953, on the authority of *Talbot* v. *Woods, supra.*

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

ROBERT A. SAUER,
Counsel

CHARLES P. LIFF,
Director of Appeals Branch,
Defense Rental Areas Division,
Office of Defense Mobilization.

August, 1953

APPENDIX

The pertinent provisions of the Housing and Rent Act of 1947, 61 Stat. 193, as amended (50 U.S.C. App., Supp. V, 1894, as amended by the Act of June 30, 1952, 66 Stat. 296, 306, the Act of July 15, 1952, 66 Stat. 637, 657, and by Public Law 23, 83rd Cong., 1st Sess.) provide as follows:

Section 204

(f) (1) The provisions of this title shall cease to be in effect at the close of September 30, 1952, except that they shall cease to be in effect at the close of April 30, 1953—

(A) in any area which prior to or subsequent to September 30, 1952, is certified under subsection (1) of section 204 of this Act as a critical defense housing area;

(B) in any incorporated city, town, village, or unincorporated area of any county which, at a time when maximum rents under this title are in effect therein, and prior to September 30, 1952, declares (by resolution of its governing body adopted for that purpose, or by popular referendum in accordance with local law) that a substantial shortage of housing accommodations exists which requires the continuance of Federal rent control in such city, town, village, or unincorporated area; and

(C) in any unincorporated locality in a defense-rental area in which one or more incorporated cities, towns, or villages constituting the major portion of the defense-

rental area have made the declaration specified in subparagraph (B) at a time when maximum rents under this title were in effect in such unincorporated locality.

* * * * * * * *

(3) Notwithstanding any provision of paragraph (5) of this subsection, the provisions of this title shall cease to be in effect upon the date of a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier.

(4) Notwithstanding any provision of paragraph (3) or (5) of this subsection, the provisions of this title and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any right or liability incurred prior to the termination date specified in such paragraph.

(5) (A) Notwithstanding any provision of paragraph (1) of this subsection—

(i) the provisions of this title shall cease to be in effect at the close of July 31, 1953, in the areas described in subparagraph (1) (B) and (C) of this subsection in which maximum rents were in effect on April 30, 1953; and

(ii) the provisions of this title shall cease to be in effect at the close of April 30, 1954, in any area which has been or is certified under subsection (l) of this section as a critical defense housing area.

(B) Any such area which was certified as a critical defense housing area prior to the date of enactment of the Housing and Rent Act of 1953 shall be reviewed by the President in the light of the new criteria applicable to critical defense housing areas and shall be continued under control after such review (which must be concluded by July 31, 1953), only if, after such review and prior to such date, the President determines that such area meets the requirements for certification under section 204 (l) as amended by such Act, and publishes in the Federal Register notice that such determination has been made.

* * * * * * * *

(r) Regulations or orders under this title shall be subject to the same proceedings for protest and review as are provided for regulations or orders relating to price controls by sections 407 and 408 of the Defense Production Act of 1950, as amended, and for such purpose such sections are hereby continued notwithstanding the provisions of section 717 of the Defense Production Act of 1950, as amended.

The pertinent provisions of Rent Regulation 1 —Housing (16 F.R. 12879, re-issued 18 F.R. 1266) provide as follows:

6—Removal of Tenant

GROUNDS

Sec. 181. *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired, or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for surrender of possession or for entry of judgment upon the tenant's confession for breach of the covenants thereof, or which otherwise provides contrary to sections 181 to 206, unless the housing accommodations are registered as required by this regulation and except on one or more of the grounds specified in sections 182 to 186 or unless a certificate has been issued as provided in sections 191 to 196.

* * * * * * * *

EVICTION CERTIFICATE

Sec. 191. *Eviction certificate; evictions not inconsistent with regulation.* No tenant shall be removed or evicted on grounds other than those stated in sections 181 to 186 of this section or other than for nonpayment of rent unless on petition of the landlord the Director

certifies that an eviction of the character proposed is not inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof. Where the housing accommodations are registered as required by this regulation, the Director shall so certify for the purposes set forth in sections 192 to 196.

* * * * * * * *

SEC. 193. *Alterations or remodeling.* Where a landlord seeks in good faith to recover possession for the immediate purpose of substantially altering or remodeling the housing accommodations and such alterations or remodeling (a) is for the purpose of creating additional housing accommodations of the type recognized as self-contained family dwelling units in the neighborhood in which they are located or (b) is to substantially improve such accommodations for continued use as housing accommodations or is reasonably necessary to protect and conserve the housing accommodations: *Provided,* That the landlord has obtained such approval for the proposed alterations or remodeling as may be required by Federal, State, and local law: *And provided further,* That such alterations or remodeling cannot practicably be done with the tenant in occupancy.

The pertinent provisions of Rent Procedural Regulation 3 (17 F.R. 6091) provide as follows:

SEC. 26. *Stay of certificates relating to eviction.* (a) Where a tenant files a protest from

an order with respect to a certificate relating to his eviction within twenty (20) days after date of its issuance, the certificate shall be stayed until thirty (30) days after determination of the protest: *Provided, however,* That the waiting period, if any, provided by the certificate shall not be tolled by the stay and that the termination or expiration of a stay shall not operate to curtail such waiting period: *And provided, further,* That where the tenant's protest or objections are dilatory, frivolous, or not made in good faith, the stay of the certificate may be terminated.

(b) If the tenant files a complaint against the order in the United States Emergency Court of Appeals in accordance with law, the certificate shall be deemed suspended until entry of the final judgment of that Court and for a period of thirty (30) days thereafter. If within that period the tenant files a petition for certiorari to review such judgment in the Supreme Court of the United States, the certificate shall be deemed suspended until ultimate disposition of the proceeding. Where, pursuant to a judgment of that Court or of the Emergency Court of Appeals the proceeding is remanded to the Director, the certificate shall remain suspended during the further proceedings before the Director.

(c) Where the certificate relating to eviction is in suspension and where, upon complaint filed by the landlord in the Emergency Court of Appeals pursuant to law against an order involving such certificate, the determi-

nation complained of is set aside in whole or in part, or the proceedings remanded to the Director, the certificate shall be deemed suspended in the same manner provided for in paragraph (b) of this section as if the tenant had been the complainant.

☆U. S. GOVERNMENT PRINTING OFFICE 1953—267373/P.O.194

OCT 6 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 181

JENNIE DARGEL, ET AL.,
Petitioners,

vs.

WILLIAM G. BARR, DIRECTOR OF RENT STABILIZATION, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI IN THE UNITED STATES EMERGENCY COURT OF APPEALS.

REPLY TO MEMORANDUM SUGGESTING MOOTNESS AND MORE EVIDENCE THEREIN THAT THE ORS IS PARTISAN.

ROBERT A. KAHN,
135 S. La Salle St.,
Chicago 3, Ill.,
Attorney for Petitioners.

REX K. NELSON,
416 5th St., N. W.,
Washington, D. C.,
Of Counsel.

THE DUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 181.

JENNIE DARGEL, ET AL.,

Petitioners.

vs.

WILLIAM G. BARR, DIRECTOR OF RENT STABILIZATION, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI IN THE UNITED STATES EMERGENCY COURT OF APPEALS.

REPLY TO MEMORANDUM SUGGESTING MOOTNESS.

ARGUMENT.

Respondent Barr suggests *Talbot* v. *Woods*, 164 F. 2d 493 (E. C. A. 1947) as authority for his contention that the question now before this Court is now moot. The case is not in point, for there the jurisdiction of the Emergency Court of Appeals had terminated prior to appeal thereto, there had been compliance with the orders and regulations issued under the Rent Act, and the purpose of the appeal was to seek return to the original status of the parties in respect to rental ceilings. The Court held that no "offense"

had been committed or shown to exist, and no "liability" or "right" was shown to exist to bring the case within the saving clause of the Housing and Rent Act of 1947, as amended, Section 204 (4) (Memorandum Suggesting Mootness—App. 7).

In this case the landlord respondent proceeded within five days after the Housing Expediter's decision of July 31, 1952 to bring forcible entry and detainers actions in the Chicago courts under and by virtue of the certificates of eviction. Judgment for possession was entered on September 5, 1953, forcing petitioners Clock, Dargel and Koch to vacate the premises. The landlord then was restrained from further evictions by order of the Emergency Court of Appeals until May 12, 1953, opinion date, after which the landlord then renewed proceedings in the Chicago courts and obtained judgment for possession against petitioner Giannakis effective May 28, 1953. Petitioner Giannakis thereafter vacated the premises.

The landlord obtained all these evictions in violation of Rent Procedural Regulation 3 (17 F. R. 6091) (Memorandum Suggesting Mootness—App. 10) with respect to each of these petitioners, and such violations created "rights" and "liabilities" in both petitioners and respondent landlord. Respondent Barr's statement (p. 4) that the certificates have been stayed since their issuance on May 13, 1952, and that petitioners were not evicted, is in error. The regulation, having the force of law, did stay the certificates from date of issuance to the present date, but the landlord prevailed upon the courts of Illinois to ignore the stay and proceeded to evict all the petitioners under and by virtue of the certificates with the exception of petitioner Corbin, who remains in possession. The Jackson-Corbin household has been constantly subjected to costly unlawful harassment. Said harassment has occasioned the death of two of the household: Earle R. Jack-

son, 83, died of heart trouble on August 2, 1952; Carrie Jackson, 88, died of heart trouble on September 29, 1953. Whether the landlord did or did not demonstrate good faith in obtaining the certificates in the first instance, the evictions were accomplished in violation of law, and the rights and liabilities that arose while the Rent Act was still in full force and effect and proper proceedings established under the Act were being had, clearly brings the case within the saving clause of the Act. The present necessity or non-necessity of the certificates does not determine mootness, for the rights and liabilities which bar mootness arose during application of the Rent Act to the Chicago Defense-Rental Area. The controversy still remains.

Moreover, the old laws are still in force in the defense rental areas and the abuse, which is the main target of the petition, still continues throughout said areas.

A ruling on the doctrine of good faith by this Court could do much to curb the worst and most notorious racket of rent control.

The constant abuse of federal law in the past should bar the violator from further acts of harassment until final adjudication.

MORE EVIDENCE THAT THE ORS IS PARTISAN.

The ORS in their answer brief made no attempt to reply to the charge of the petitioners that the ORS has been partisan but they give strong additional evidence of how true the charge is, not merely in the case 181 of the petitioners, but in general.

General Reasons Why the ORS Is Partisan.

The reason for this is the continued housing shortage. Blame for this is the most severe criticism that the ORS has had to meet. In consequence the ORS became partisan more and more in conversion cases. This tendency was by no means lessened by the fact that the remedy was more specious than real. (This remedy provided less living space than before on account of the partitions and hall. The lighting was inferior. The neighborhood was deteriorated. A real remedy would still more quickly have ended the life of the agency.) Mr. Morris A. Lieberman, Counsel for Region 6, told Corbin on May 15, 1952, two days after the Chicago ORS had granted certificates of eviction against the petitioners, that these certificates were being rushed through. In the various appeals to Washington, said he, this is a common situation: the tenants write letters; the landlord replys with three words "I deny everything". In such case, he added, unless the letters are in the form of affidavits, they will not even be read, and the certificates will be confirmed.

Two Dead.

Now, the character of those who are willing to engage in speculation in the eviction of longtime tenants is one somewhat of ruthlessness and greed. In the instant case, two are already dead, the deaths occasioned thereby. One was Earle R. Jackson, 83, died August 2, 1952, of heart trouble. The other was Carrie Jackson, 88, died September 29, 1953, same way. Incidentally, ruthlessness and greed are qualities that frequently do not grace the possessor with strict truthfulness or honesty: another reason why the ORS needs to be partisan in supporting them.

How the ORS Reply Brief Discloses Again That They Are Partisan.

The ORS begins their argument with the statement (page 4) that the issue is one of fact, not of law; that, in other words, the ORS and the petitioners are agreed upon the law. They said the same thing before the EmCA. But before the EmCA the law was one thing. Before this Court it is another. Before the ORS in Chicago, it was still a third. Under the Chicago interpretation of the law, it was impossible for the petitioners to win. Before the EmCA, the interpretation of law that the ORS managed to put across on the EmCA (R. 130-4) made the main contention of the petitioners worthless, no matter how true.

In the ORS reply brief or memorandum of mootness, the ORS quotes (page 3), with approximate correctness, the main contention of the petitioners. This is, in effect, the petitioners' statement of the law in the case. Since the ORS has already stated that there is no issue of law be-

tween themselves and the petitioners, they hereby agree that the law as exemplified in the main contention of the petitioners, is correct. In other words they agree that if the landlord uses the legal privilege to convert as a threat to obtain overcharges, give underservices and prevent complaint to the ORS, then the landlord is in bad faith and shall be barred from conversion.

The law in the case as stated by the petitioners, has been unchanged from the beginning. (See Pet. 6, 2nd para. from bottom and R. 89, top of page.)

Now the moment the ORS admits that our main contention, if true, proves bad faith in the landlord, our case becomes a practical certainty for it rests upon the OHE order of August 24, 1950 reducing rents, the Municipal Court contest ending October 19, 1950, the landlord's own affidavit and words of admission and things agreed upon by both sides.

That he obtained overcharges knowingly and wilfully and gave underservices the same way is proved absolutely from the record without the petitioners making a single assertion.

That landlord obtained the overcharges and underservices and prevented complaint by the threat to convert, is a conclusion that any disinterested jury would arrive at, even if the petitioners said nothing.

The only statements that the petitioners need make to explicitly complete the cycle of evidence against the landlord is to swear that said overcharges, underservices and prevention of complaint was obtained by threats to convert.

They have all so sworn. (R. 89.)

By evidence of which no assertion of any petitioner is any part, the landlord has been convicted of perjury.

Not one single untruth has been proved against the petitioners.

Respectfully submitted,

ROBERT A. KAHN,
135 S. La Salle St.,
Chicago 3, Ill.,
Attorney for Petitioners.

REX K. NELSON,
416 5th St., N. W.,
Washington, D. C.,
Of Counsel.

APPENDIX A.

THE VARIOUS DOCTRINES OF GOOD FAITH.

In Chicago the doctrine of good faith required only that the landlord intended to convert, regardless of previous conduct.

Before the EmCA the doctrine of good faith was, that the intent to convert, besides being real, must not have as main motive the desire to evict in retaliation for rights demanded by tenants. (R. 130-4) This doctrine was copied exactly from the ORS brief, which petitioners did not see till too late. Three copies were mailed to them, in succession. Only one, the last, which was registered, arrived. By this time the EmCA Opinion of May 12 (R. 130) had been already printed.

From the oral statement of the ORS before the EmCA, that the issue between us was one of fact, not of law, the petitioners were deceived into thinking that they agreed with the ORS on the applicable law, and said so orally before the EmCA.

The ORS then went on to say that the whole matter was one of credibility and they had decided for the landlord; that it was their function to determine who was telling the truth; that they had had to speculate and guess from the nature of the case, but they had done the best they could under the circumstances.

Now the EmCA deduced their applicable doctrine of good faith from Housing Rent Regulation 1, Section 193, reasoning from the words "good faith" therein.

They deduced that the intent to convert was not in good faith if the main purpose was to evict in retaliation. (R. 130-4.)

Still more logically the EmCA could have deduced that the intent to convert should not be used as a threat for levying blackmail for certainly a swindle ending in eviction is worse than an eviction in anger. And the sound legal maxim that the abuse of a legal privilege bars the violator from its lawful use, applies here.

However, the petitioners were deceived into thinking that the applicable law as applied by the EmCA would be the same as they believed it to be and consequently the EmCA (this was their first case of this kind) stated the law to be what both contestants seemed to agree it was.

Under this interpretation of law it would have been extremely difficult for the petitioners to win.

The applicable law of good faith as now agreed between both contestants before the Supreme Court, as stated and used by Morris A. Lieberman in the past, can be stated briefly in three sentences: (1) The intent to convert must be real. (2) The main motive must not be retaliation. (3) It must not be used as a threat previous to conversion to levy blackmail.

This doctrine has been variously deduced from Housing Rent Regulation No. 1, Section 193. The Housing and Rent Act of 1947, section 206h, and the legal maxim that the abuse of a legal privilege shall bar the violator from its lawful use.

The ORS strategy before the EmCA was to say both sides agreed on the law; that it was their function to judge facts, and on credibility they decided against the petitioners.

What the petitioners accuse the ORS of doing is the narrowing of the law of good faith to fit the occasion so that the tenants will be sure to lose.

One clear authoritative statement from the Supreme Court on this subject would do much to curb the racket at which this cause is aimed.

APPENDIX B.

IN THE APPELLATE COURT OF ILLINOIS
First District

December Term, A. D. 1952.

HAROLD H. ELFENBEIN, *Plaintiff,* *vs.* MR. DIONYSIOS GIANNAKAS also known as DENNIS GINNAKIS, *Defendant.*	Appeal from the Municipal Court of the City of Chicago. Honorable Eugene J. Holland, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT.

STATEMENT OF THE CASE.

This is an appeal from an order of possession granted Plaintiff against Defendant in an action of forcible entry and detainer.

On May 13, 1952, the local office of Rent Stabilization issued a certificate of eviction against Defendant in favor of Plaintiff. Defendant appealed to the Rent Director, Office of Rent Stabilization, and said appeal was denied on the 31st day of July, 1952.

On August 5, 1952, an action in forcible entry and detainer was commenced in the Municipal Court of Chicago for possession of Defendant's apartment. Defendant filed a special appearance, not buttressed by any motion

or affidavit in support of such special appearance. The trial court held that, inasmuch as a special appearance was filed without a motion and/or affidavit, the special appearance became a general appearance and that the trial court had jurisdiction over the subject matter. Defendant did not contest the validity of the termination-of-tenancy notice nor the validity of the service of process.

Defendant, in oral support of his special appearance, claimed the trial court was without jurisdiction to hear this case for the following reasons:

1. Rent Procedural Regulation 2, dated November 21, 1951, and Rent Procedural Regulation 3, dated July 1, 1952, promulgated by the Director of Rent Stabilization, which Regulations are incorporated by reference herein and made part hereof, and, more particularly, Section 26 of said Regulation 2 read as follows:

> "Sec. 26. *Stay of Certificates relating to eviction.* Where a tenant files an appeal from an order with respect to a certificate relating to his eviction within twenty (20) days after date of its issuance, the certificate shall be stayed until ten (10) days after determination of the appeal: *Provided, however,* That the waiting period, if any, provided by the certificate shall not be tolled by the stay and that the termination or expiration of a stay shall not operate to curtail such waiting period: *And provided, further,* That where the tenant's appeal or objections are dilatory, frivolous, or not made in good faith, the stay of the certificate may be terminated."

Rent Regulation 3, Section 26b and Rent Regulation 2, Section 26 both provide stays after adjudication. The difference is that Rent Regulation 2 provides a stay of only 10 days, whereas Rent Regulation 3, Section 26b provides a stay of 30 days after denial by the ORS in Washington. This is by inference from the Defense Produc-

tion Act Amendments of 1952, Public Law 429, Section 408a.

2. Defendant filed suit in the Federal District Court of Columbia on August 11, 1952, against Tighe E. Woods, Civil Action Number 3566-'52, asking for a mandatory injunction and for review of the order of the Director of Rent Stabilization dated 31st of July, 1952, said order denying Defendant's appeal. No motion for a temporary injunction or other relief had been made in this cause.

3. Defendant filed another suit asking for the same relief in the United States Emergency Court of Appeals on August 30, 1952, and given the number 611 in said court. The filing of this suit was based on Rent Procedural Regulation 3, dated July 1, 1952, issued by the Director of Rent Stabilization, incorporated by reference herein and made part hereof, and, more specifically, Section 26(b) of said Regulation, which reads as follows:

> "(b) If the tenant files a complaint against the order in the United States Emergency Court of Appeals in accordance with law, the certificate shall be deemed suspended until entry of the final judgment of that Court and for a period of thirty (30) days thereafter. If within that period the tenant files a petition for *certiorari* to review such judgment in the Supreme Court of the United States, the certificate shall be deemed suspended until ultimate disposition of the proceeding. Where, pursuant to a judgment of that Court or of the Emergency Court of Appeals the proceeding is remanded to the Director, the certificate shall remain suspended during the further proceedings before the Director."

That this filing was done according to law is established by the Defense Production Act Amendments of 1952, Public Law 429, Section 408a.

(That said filing was according to law was affirmed,

again in the Em C A opinion printed Dec. 17, 1952 (R. 115).)

The trial court denied all of Defendant's contentions of the law and entered judgment for Plaintiff.

Errors Relied Upon for Reversal.

The Trial Court erred:

1. In entering judgment for the Plaintiff.

2. The Trial Court erred in not finding the issues against the Plaintiff because of his failure to comply with the Rent Regulations promulgated by the Office of Rent Stabilization.

3. The Trial Court erred because it gave no legal efficacy to the Rent Regulations promulgated by the Office of Rent Stabilization.

4. The Trial Court erred in granting a verdict for Plaintiff in that it did not have any jurisdiction over the subject matter to grant such judgment.

5. The Trial Court erred in that the Complaint was not dismissed for reason of lack of jurisdiction over the subject matter.

6. The Trial Court erred in that it ignored two pending appeals, one in the Federal District Court of District of Columbia, and one in the United States Emergency Court of Appeals.

POINTS AND AUTHORITIES.

I.

The filing of a special appearance, not buttressed by a motion or affidavit, does not constitute a general appearance in a forcible entry and detainer case.

Rule 14, Paragraph 2, Rules of Municipal Court.
Section 48, Par. (4) Civil Practice Act as set forth in Smith-Hurd Annotated Statutes, Chap. 110, Section 172.

II.

A defendant even by a general or voluntary appearance does not confer jurisdiction of the subject matter or waive the lack thereof.

Rent Procedural Regulation 2, promulgated by Director of Rent Stabilization, Nov. 21, 1951 (published in Federal Register).

Rent Procedural Regulation 3, promulgated by Director of Rent Stabilization, July 1, 1952 (published in Federal Register).

Gill v. *Lynch,* 367 Ill. 203, 10 NE (2) 812.

People ex rel. Carlstrom v. *Shurtleff,* 355 Ill. 210, 189 NE 291.

Hawkins v. *Hawkins,* 350 Ill. 227, 183 NE 9.

McGarry v. *Village of Wilmette,* 303 Ill. 147, 135 NE 96.

Litzelman v. *Town of Fox,* 285 Ill. App. 7, 1 NE (2) 915.

Village of Glencoe v. *Industrial Commission,* 354 Ill. 190, 188 NE 329.

Town of Kingston v. *Anderson*, 300 Ill. 577, 133 NE 347.

Eggleston v. *Royal Trust Co.*, 192 Ill. 101, 61 NE 423.

III.

Federal regulations pertaining to landlord and tenant must be strictly complied with before the local courts assume jurisdiction over the subject matter.

Rent Procedural Regulations 2 and 3 (published in Federal Register).

West Town Real Estate Corp. v. *Willett*, 331 App. 109, 72 NE (2) 449.

222 East Chestnut St. Corp. v. *Murphy*, 325 Ill. App. 392, 60 NE (2) 450.

Jageman v. *McMahan*, 331 Ill. App. 10, 72 NE (2) 449.

Hussos v. *Vasel*, 346 Ill. App. 12.

Robinson v. *Robinson*, 329 Ill. App. 515, 69 NE (2) 904.

City of Chicago v. *Chicago Steamship Lines, Inc.*, 328 Ill. 309, 159 NE 301.

ARGUMENT.

I.

The filing of a special appearance, not buttressed by a motion or affidavit, does not constitute a general appearance in a forcible entry and detainer case.

Paragraph (2) of Rule 14 of the Rules of the Municipal Court of Chicago, as set out in the Municipal Court Manual, reads as follows:

> "Provided, however, in an action of forcible entry and detainer, or in any action for the recovery of money or the value of the personal property sought to be recovered does not exceed $200.00, the defendant need not file any defense unless ordered by the court to do so; and when in any such case no defense is ordered, the allegations of the plaintiff's statement of claim will be deemed denied, and any affirmative defense may be proved as if it were specifically pleaded."

The Civil Practice Act, Sec. 48, par. (4), as set forth in Smith-Hurd Annotated Statutes, Chap. 110, Sec. 172, reads as follows:

> "Sec. 48, Par. (4) The raising of the defense that the court has no jurisdiction of the subject matter of the action or suit can be raised by answer as well as by motion, and a failure to raise such defense by motion shall not prejudice raising it by answer."

In the case at bar, the trial court ruled that a special appearance as was filed in this matter for defendant but was not buttressed by a motion or affidavit became a general appearance, and defendant gave the trial court jurisdiction over the subject matter. This ruling is clearly inconsistent with the rules of the Municipal Court and the Civil Practice Act as set out above.

If one can raise jurisdictional matters at any time, even by answer, *a fortiori* one can do so by the mere filing of a special appearance in a forcible entry and detainer matter.

II.

A defendant even by a general or voluntary appearance does not confer jurisdiction of the subject matter or waive the lack thereof.

Even construing the appearance of the defendant to be a general one, the trial court did not have jurisdiction of the subject matter because under Rent Procedural Regulation 2, promulgated by the Director of Rent Stabilization on November 21, 1951 (published in Federal Register), Section 26 reads as follows:

> "Where a tenant files an appeal from an order with respect to a certificate relating to his eviction within 20 days after its issuance, the certificate shall be stayed until 10 days after determination of the appeal: Provided, however, that the waiting period, if any, provided by the certificate shall not be tolled by the stay and that the termination or expiration of a stay shall not operate to curtail such waiting period."

Rent Procedural Regulation 3, Section 26, promulgated on July 1, 1952, as published in the Federal Register, is the same in essence as Regulation 2 as set forth above, with the exception that it provides for a thirty-(30-)day stay instead of a ten-(10-)day stay.

In the instant case the appeal of defendant was denied by the Rent Director on the 31st day of July, 1952, and appellee filed suit on August 5, 1952. It is, therefore, obvious that under Rent Procedural Regulation 2, the ten days had not elapsed and that, therefore, the trial court did not have jurisdiction over the subject matter.

The legal doctrine is well settled that the acts and proceedings of a court which is without jurisdiction in the particular case, or is acting in excess of its jurisdiction, are void.

Gill v. *Lynch,* 367 Ill. 203, 10 NE (2) 812.
People ex rel. Carlstrom v. *Shurtleff,* 355 Ill. 210, 189 NE 291.
Hawkins v. *Hawkins,* 350 Ill. 227, 183 NE 9.
McGarry v. *Village of Wilmette,* 303 Ill. 147, 135 NE 96.
Litzelman v. *Town of Fox,* 285 Ill. App. 7, 1 NE (2) 915.

It is a well-settled general rule that a defendant by a general or voluntary appearance does not confer jurisdiction of the subject matter or waive the lack thereof.

Village of Glencoe v. *Industrial Commission,* 354 Ill. 190, 188 NE 329.
Town of Kingston v. *Anderson,* 300 Ill. 577, 133 NE 347.
Eggleston v. *Royal Trust Co.,* 192 Ill. 101, 61 NE 423.

III.

Federal regulations pertaining to landlord and tenant must be strictly complied with before the local courts assume jurisdiction over the subject matter.

In the instant case, the Defendant filed suit in the Federal District Court of Columbia on August 11, 1952, against Tighe E. Woods, Director of Rent Stabilization, Civil Action Number 3566-'52, asking for a mandatory injunction and for a review of the order of the Director of Rent Stabilization dated the 31st day of July, 1952, which order

denied Defendant's appeal to revoke the certificate of eviction issued by the Office of Rent Stabilization.

Defendant, to further protect his rights, filed another suit, asking for the same relief, in the United States Emergency Court of Appeals on August 30, 1952, said case being given the number 611 in the United States Emergency Court of Appeals. The filing of this suit was based on Rent Procedural Regulation 3 dated July 1, 1952, issued by the Director of Rent Stabilization and published in the Federal Register and, more specifically, Section 26(b) of said Regulation, which reads as follows:

> "Sec. 26 (b) If the tenant files a complaint against the order in the United States Emergency Court of Appeals in accordance with law, the certificate shall be deemed suspended until entry of the final judgment of that Court and for a period of thirty (30) days thereafter. If within that period the tenant files a petition for certiorari to review such judgment in the Supreme Court of the United States, the certificate shall be deemed suspended until ultimate disposition of the proceeding. Where, pursuant to a judgment of that Court or of the Emergency Court of Appeals the proceeding is remanded to the Director, the certificate shall remain suspended during the further proceedings before the Director."

It is submitted that the Defendant filed his appeal within the thirty-(30-)day limit as set forth in Rent Procedural Regulation 3 and, therefore, should have been afforded the protection of Section 26 (b) of the Rent Procedural Regulation 3, which, in essence, suspended the certificate of eviction and withheld jurisdiction from the trial court.

The court should take judicial notice of rent regulations for housing issued under the Federal Rent Control Act which was reported in the Federal Register.

222 East Chestnut St. Corp. v. *Murphy,* 325 Ill. App. 392, 60 NE (2) 450.

Since rent regulations adopted under provision of Emergency Price Control Act are reported in the Federal Register, Appellate Court would take judicial notice of it, and landlord must comply with all federal regulations.

Jageman v. *McMahan*, 331 Ill. App. 10, 72 NE (2) 449.

In the case of *Hussos* v. *Vasel*, 346 Ill. App. 12, decided by the Appellate Court of First District on January 30, 1952, this honorable court recognized the Federal Rent Control Regulations as superseding local law in an action of forcible entry and detainer.

Proof of compliance by landlord with sections 6 (d)(1) and 6(d)(2) of OPA Rent Regulations, requiring copy of eviction notice as well as written notice as to commencement of action to be given to Area Rent Office, was indispensable to maintenance of forcible detainer action to recover possession of leased premises for alleged breach of covenants in lease respecting occupancy by persons other than lessee, and Appellate Court would affirm judgment against landlord where record failed to show such compliance, even though landlord's brief contained statement that he had complied with such requirements.

West Town Real Estate Corp. v. *Willett*, 331 App. 109, 72 NE (2) 449.

Conclusion.

The fact that landlords and tenants in cases similar to the instant one are controlled by the Federal Rent Control Act has been clearly established by our courts to the extent that compliance with the Federal Rules and Regulations is a condition precedent and jurisdictional to bringing suit for possession.

The forcible entry and detainer statute is a special statu-

tory proceeding, summary in its nature, and in derogation of common law, and the statute must be strictly followed.

Robinson v. *Robinson*, 329 Ill. App. 515, 69 NE (2) 904.

City of Chicago v. *Chicago Steamship Lines, Inc.*, 328 Ill. 309, 159 NE 301.

It is submitted that the Federal Rent Control Laws, Rules and Regulations have become merged with our local forcible entry and detainer Statute, and that such Federal Laws, Rules and Regulations must also be strictly followed.

We respectfully submit that error was committed by the trial court inasmuch as it refused to be bound by these paramount rules and regulations.

We respectfully urge this Honorable Court that the judgment of the Municipal Court of the City of Chicago should, therefore, be reversed.

Respectfully submitted,

FREEMAN & LIEBLING,
Attorneys for Defendant,
100 North La Salle Street,
Chicago 2, Illinois,
RAndolph 6-8420.

16

OCT 27 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 181

JENNIE DARGEL, ET AL.,

Petitioners,

vs.

WILLIAM G. BARR, DIRECTOR OF RENT STABILIZATION, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI IN THE UNITED STATES EMERGENCY COURT OF APPEALS.

PETITION FOR REHEARING.

ROBERT A. KAHN,
135 S. La Salle St.,
Chicago 3, Ill.,
Attorney for Petitioners.

REX K. NELSON,
416 5th St., N. W.,
Washington, D. C.,
Of Counsel.

THE GUTHROP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 181.

JENNIE DARGEL, ET AL.,

Petitioners,

vs.

WILLIAM G. BARR, DIRECTOR OF RENT STABILIZATION, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI IN THE UNITED STATES EMERGENCY COURT OF APPEALS.

PETITION FOR REHEARING.

1.

REASONS FROM THE RULE BOOK FOR GRANTING OUR PETITION.

"A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered."

This quotation introduces Section 5 of Rule 38 of the Rule Book of this Court. In the discussion that follows

there is implicit that this Court governs its actions in the public interest, as do all bodies politic.

Reasons for granting our petition that would deserve consideration and which, we claim, are applicable to our case, occur in paragraphs (b) and (c).

We quote. The numbering and paragraphing is ours.

1. "Where a * * * Court of Appeals * * * has decided an important question of local law in a way probably in conflict with applicable local decisions."

2. "Or has decided an important question of federal law which has not been, but should be, settled by this court."

3. "Or has so far departed from the usual course of judicial proceedings, *or so far sanctioned such a departure by a lower court,* as to call for an exercise of this court's power of supervision."

4. "Where the Court of Appeals has decided a question of general importance * * * which has not been, but should be, decided by this court."

Replace in (1) the words "local law" by "federal law as locally applied" and in (3) the words "lower court" by "ORS" and in (1) and (4) the court of appeal named, by the "United States Emergency Court of Appeals (EmCA)." This does not depart from the spirit of the rule and it makes all four quotations directly applicable to our case.

THE QUESTION OF IMPORTANCE.

We consider first the question of importance. The abuse complained of has been nationwide and is still widespread in defense rental areas, a domain sufficiently widespread to merit the attention of this Court. Moreover, elsewhere the abuse is only dormant and may well come to life again after that war comes which history says always follows an armament race.

Further importance is given to this issue by the two basic constitutional rights involved: one; the right to life, liberty and the pursuit of happiness and the other; the fundamental right of a man to enjoy the fruit of his own efforts, or, to quote the fable, the industrious ant has no obligation to divide with the frivolous grasshopper.

Another important evil that could be much lessened by this Court is the temptation to swindle promoted by the privilege to convert, by the partisanship of the ORS for conversion, by the defying by some judges of Reg. 3, Section 26(b), and by the desire of tenants to continue their tenancy. These things make swindling safe and easy and tempt to a moral degeneration that outweighs the very doubtful advantage to the public of conversions by people corrupted by these temptations.

NO CONSTITUTIONAL RIGHT OF THE LANDLORD HAS BEEN INFRINGED UPON.

The feeling of some landlords that they are in the position of the ant dividing with the grasshopper, is erroneous. Congress recognized when they created the OHE that all rental property had at that time two values (still has), one that belongs absolutely to the owner, and a second value, put there by war scarcity: men drafted to war and restrictions on materials. This second value was put there by all the people and the OHE was created to keep the landlords from profiteering upon it.

We submit, therefore, that no fundamental rights of the respondent landlord are here at stake, as the war scarcity value of his property is alone involved. On the contrary, in converting, he is using the war scarcity or gift value of his property to deteriorate the fundamental or absolute property rights of his neighbors.

On the other hand, the fundamental right to life, liberty and the pursuit of happiness, was heavily infringed upon by war necessity. The men drafted had their careers interfered with, their liberty suspended, their homes, their health, their very lives endangered. In contrast the OHE guaranteed that 20% of the gross income of rental property should be net profit. This allowed for all costs, including taxes. Moreover that guarantee was made good by that very same gift value aforementioned, war scarcity.

This argument that no constitutional right of the landlord has been infringed upon, may be in the nature of a defense where no one accuses. It grew out of the words and acts of Judge Schaeffer of the Illinois Supreme Court, who sat thru the vacation period.

Petitioner Giannakis had been before the Municipal Court, the Ill. Appellate Court, 3rd division, and last before Judge Schaeffer to get him to stay the mandate. The Municipal Judge had imposed a $450 appeal bond. The Appellate Judges had increased this bond by $1000, and in order to stay the mandate, Judge Schaeffer required an additional $10,000 bond. All of these bonds were imposed in defiance of Regulation 3, Section 26(b). In no case were the merits of the litigation either presented or argued. The $10,000 bond was too much additional damage to the business of Giannakis and so he traded his appeal to the Ill. Supreme Court for time to find another apartment. Judge Schaeffer negotiated the trade. Judge Schaeffer told petitioner, Corbin, at the time, that he knew how the U. S. Supreme Court thought, intimating that said Court agreed with him. The petitioners inferred from this that Federal Rent Regulation 3, Section 26(b), published in the Federal Register, was, in the mind of Judge Schaeffer, either unconstitutional or not lawful.

SHOWING HOW WIDESPREAD HAS BEEN THE INSTINCT TO MISUSE THE PRIVILEGE TO CONVERT.

"The only real control that a landlord has over a tenant is the privilege to convert."

"I can evict anyone I want by cutting up his apartment."

Such statements as above quoted and similar ones are in the experience of everyone who has any interest in landlord and tenant disagreements. This includes almost the entire adult population of this country, including the Honorable Judges of this Court. Comparatively few, of course, make use of the above ideas, but their existence is hardly a secret from anyone.

AN AUTHORITATIVE DEFINITION OF GOOD FAITH IS BADLY NEEDED.

An authoritative definition of good faith is badly needed for the following reasons:

Note the interpretation of good faith given by the EmCA (R. 130-4) and note on pages 8 and 9 of the petition how badly it applies to such cases as ours: how it can be made to uphold either the right or the wrong.

Note the case quoted by the EmCA in the record (R. 131-5) and the statement of the judge "without attempting a definition of good faith" * * *.

Note the word CONFIDENTIAL printed in the upper left hand corner of Appendix A in the petition, showing the attitude of secrecy with regard to issue of good faith as there partly explained, at the time when it was published.

Note that Norman R. Liebling, one of our attorneys, spent three days in Washington trying to get from the ORS their interpretation of the doctrine of good faith as applicable in conversion cases, and could not get it.

Note that at the time of our hearing in Chicago, the ORS

doctrine of good faith was that he must really intend to convert: that before the EmCA, the doctrine of good faith was that conversion must be really intended and the motive must not be revenge (R. 130-4) and that before this Court the doctrine as presented by us and accepted by the ORS in their Suggestion of Mootness, is that conversion must be really intended, it must not be done for revenge. And the threat to convert must not have been used previously to collect overcharges, give underservices or prevent complaint. The narrower doctrine accepted by the EmCA was that expounded to them by the ORS.

Evidently for the sake of the rule of law and not of men, an authoritative statement of the doctrine of good faith is badly needed. It would do much to stop the abuse complained of.

A statement that Federal Rent Regulation 3, Section 29 (b) is the law would also help curb the abuse.

CONCLUSION.

Indications are plain herein why the four quotations from the Rule book are applicable.

Respectfully submitted,

ROBERT A. KAHN,
135 S. La Salle St.,
Chicago 3, Ill.,
Attorney for Petitioners.

REX K. NELSON,
416 5th St., N. W.,
Washington, D. C.,
Of Counsel.

SUPPLEMENTARY STATEMENTS.

The four reasons from the rule book that would deserve consideration in granting our petition, considered one at a time.

1. "WHERE A * * * COURT OF APPEALS * * * HAS DECIDED AN IMPORTANT QUESTION OF LOCAL LAW IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE LOCAL DECISIONS."

Certainly it is improbable that the local application of federal law, as applied in Chicago, was in harmony with the law as expounded by the EmCA, for otherwise the arguments of the experienced Chicago lawyers of the petitioners, were absurdities that had no bearing on the real issue, as the following will demonstrate.

Read the applicable law as expounded by the EmCA (R. 130, 4): the EmCA's version of the grievances of the tenants and the landlord's defense thereto (R. 131, 5; R. 132, 6).

Note: that based on the applicable law here expounded, the landlord could have said: "The grievances here stated are all true and my defense against them all lies. Moreover, I admit that several times I was good and angry. But I was at no time angry enough to spend $18,000 to get even. I could not afford any such luxury. My main motive in conversion is profit. I may be a liar, but certainly common sense will sustain me in this. Therefore, since I really intend to convert and since my main motive is profit, not anger, I have sought the certificates of eviction in good faith, and am entitled to them, according to the law as expounded by the EmCA. For according to the applicable law as here expounded, the fact that I

abused the legal privilege to convert by using it as a tool for blackmail for collecting overcharges, giving underservices, preventing complaint to the ORS, and other infringements of rights, have no bearing on my right to convert or the question of good faith."

How inequitable this doctrine of good faith as applied to conversions, is, is plainly shown on pages 8 and 9 of the Petition.

Moreover, note: that when the EmCA decided against the Petitioners, their decision was not that the Petitioners were untruthful, but that their arguments were irrelevant. This is the plain inference to be drawn from pages 130, 4; 131, 5; and 132, 6, of the Record.

The EmCA had accepted the doctrine of good faith presented to them by the ORS to fit the occasion, a matter in which the Petitioners had acquiesced through misapprehension, as explained elsewhere.

Note also, that when the threat to convert as a tool for fraud, is added to the definition of bad faith, the above suppositious argument of the landlord becomes worthless.

The doctrine of good faith, as was the practice in Chicago for years under Mr. Moses and Mr. Morris A. Lieberman, general counsel of Region 6, was the doctrine upon which the Petitioners' argument rested. It is the doctrine expounded in our Petition and accepted by the ORS before this Honorable Court.

2. "Or Has Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled By This Court."

There is no one thing that would go so far to curb the abuse which has been nationwide and which is still widespread, as an authoritative statement from this Honorable

Court as to what is the doctrine of good faith in the matter of conversions. Certainly this Court is the only one that can correct the erroneous interpretation given by the EmCA, and the multiple interpretations given by the ORS to fit the occasion.

3. "Or Has So Far Departed From the Usual Course of Judicial Proceedings, or So Far Sanctioned Such a Departure By a Lower Court as to call for an exercise of this Court's power of supervision."

Now a fraud based on the legal privilege to convert as a threat, is surely a worse abuse of said privilege than an eviction in anger based on the same privilege, and therefore an opinion that calls such eviction bad faith and ignores the fraud, is faulty. The EmCA had departed from what had been usual practice due, perhaps, from lack of knowledge of such cases. Certainly they could not get such knowledge from the ORS whom they had accused, in their Opinion of December 17, 1952 (R. 115), of legislating rather than interpreting in claiming that the Petitioners were not lawfully filed in their Court. The Petitioners did not know the interpretation of the EmCA until after they read it in their final Opinion (R. 127). They had been misled by the ORS into thinking that everyone was in harmony on the law. Consequently, before the EmCA, the question of law was never raised.

4. "Where the Court of Appeals Has Decided a Question of General Importance * * * Which Has Not Been, But Should Be, Decided By This Court."

The doctrine of good faith has been decided wrongly by the EmCA, we claim. Said decision would foster the abuse complained of, not curb it. Surely its importance is suffi-

ciently general as to merit an authoritative decision by this Honorable Court.

Respectfully submitted,

ROBERT A. KAHN,
135 S. La Salle Street,
Chicago 3, Illinois,
Attorney for Petitioners.

REX K. NELSON,
416 Ith Street, N. W.,
Washington 1, D. C.,
Of Counsel.